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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/563,244	01/03/2006	Saburo Yamada	050860	1267
23850 7590 09/09/2008 KRATZ, QUINTOS & HANSON, LLP 1420 K Street, N.W. Suite 400 WASHINGTON, DC 20005				
EXAMINER				
OLSON, LARS A				
ART UNIT		PAPER NUMBER		
3617				
MAIL DATE		DELIVERY MODE		
09/09/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/563,244

Applicant(s)

YAMADA, SABURO

Examiner

Lars A. Olson

Art Unit

3617

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-6 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SF 298)
Paper No(s)/Mail Date ____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date ____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: ____

DETAILED ACTION

1. An amendment was received from the applicant on June 10, 2008.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1, 2 and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Boland (US 4,274,335).

Boland discloses a monorail vehicle, as shown in Figures 1-7, that is comprised of a chassis base, defined as Part #3, a pair of first and second wheels, defined as Parts #6 and 7, that are held by said base for rotation on an upper surface of a rail, defined as Part #1, a third wheel, defined as Part #9, that is held by said base for rotation on a lower surface of said rail, and a motor, defined as Part #10, for driving one of said first and second wheels, as shown in Figure 4, where said wheels are held by said base through a cushioning member, defined as Part #15. Said third wheel is further comprised of two wheels, defined as Parts #8 and 9, which are spaced from each other in the extending direction of said rail, as shown in Figure 2.

Boland, as set forth above, discloses all of the features as claimed except for said first, second and third wheels having a specific positioning and distance between them.

The use of a vehicle with wheels having a specific spacing, distance or positioning between them would be considered by one of ordinary skill in the art to be a design choice based upon the desired loading of said wheels by the weight of said vehicle.

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention, to utilize a vehicle with wheels having a specific spacing in combination with the monorail vehicle as disclosed by Boland for the purpose of providing a vehicle with improved support and wheel loading for operation on a rail.

4. Claims 3 and 4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Boland in view of Lich (US 3,092,039).

Boland, as set forth above, discloses all of the features as claimed except for the use of wheels comprised of tires made from an elastic material, and an auxiliary wheel that is rotatable on a side surface of a rail.

Lich discloses a suspended railway system, as shown in Figures 1-20, that includes a vehicle comprised of a base, defined as Part #7, first and second wheels, defined as Part #2, having pneumatic tires that are rotatable on an upper surface of a rail, defined as Part R, and an auxiliary wheel, defined as Part #12, that is rotatable on a side surface of said rail under one of said first and second wheels.

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention, to utilize a vehicle with elastic tires and an auxiliary wheel, as taught by Lich, in combination with the monorail vehicle as disclosed by Boland for the purpose of providing a vehicle with additional support and cushioning for operation on a rail.

5. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Boland in view of Becker et al. (US 3,760,737).

Boland, as set forth above, discloses all of the features claimed except for the use of a vehicle that is arranged above a rail.

Becker et al. discloses a monorail, as shown in Figures 1 and 2, that includes a rail with a plurality of bearing surfaces, as shown in Figure 2, and a vehicle that is arranged either above said rail, defined as Part A, or below said rail, defined as Part B, as shown in Figure 1.

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention, to utilize a vehicle that is arranged either above or below a rail, as taught by Becker et al., in combination with the monorail vehicle as disclosed by Boland for the purpose of providing a monorail system with a vehicle that can be arranged above or below a rail in order to facilitate loading and unloading of said vehicle.

Response to Arguments

6. Applicant's arguments filed on June 10, 2008 regarding claims 1-5 have been fully considered but they are not persuasive.

7. The applicant argues that the spacing of the wheels of the vehicle as claimed is not disclosed by Boland (US 4,274,335), nor is it a mere design choice.
8. In response to the applicant's argument, Boland discloses a monorail vehicle that does not show the specific wheel spacing as claimed by the applicant. However, one of ordinary skill in the art would be able to readily anticipate the wheel spacing as claimed, since the wheel spacing of said monorail vehicle is determined by the desired wheel loading by the weight of said vehicle on a rail. In order to provide said vehicle with better gripping or traction on said rail, one of ordinary skill in the art would obviously choose a wheel spacing that would result in a heavier wheel loading. Thus, the specific wheel spacing for a vehicle traveling on a rail would be determined by the desired wheel loading on said rail, and would not have any patentable weight. Therefore, the rejection of claims 1-5 is deemed proper and is not withdrawn.
9. Applicant's arguments with respect to claim 6 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

10. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

11. Any inquiry concerning this communication from the examiner should be directed to Exr. Lars Olson whose telephone number is (571) 272-6685.

lo

September 5, 2008

/Lars A Olson/

Primary Examiner, Art Unit 3617